

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: STORY CITY MUNICIPAL ELECTRIC UTILITY	DOCKET NO. A-03-756
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ORDER COMPROMISING CIVIL PENALTY

(Issued August 20, 2004)

Story City Municipal Electric Utility (Story City) is a public utility as defined in Iowa Code § 476.1 (2003). As such, Story City is required to file with the Utilities Board (Board) an annual report, identified as Form ME-1, pursuant to 199 IAC 23. The report is to be filed on or before April 1 of each year and describes the utility's operations for the preceding calendar year. 199 IAC 23.1(2).

Story City has not filed its annual report in a timely manner at any time during the last eight years. Each year it has been necessary for Board staff to contact Story City regarding the filing. Story City's annual report has been filed late every single year and over two months late in five out of the last eight years.

On May 11, 2004, Board staff sent a letter to Story City stating that the 2003 annual report was past due and that the letter constituted written notice of a specific violation of 199 IAC 23.1(2), pursuant to Iowa Code § 476.51. The letter further indicated that failure to file the required report within 30 days of the date of the letter, that is, by June 11, 2004, may result in assessment of a civil penalty of not less than

\$100 per violation, with each day of the continuing violation to be considered a separate and distinct violation.

As of June 29, 2004, Story City had not filed its annual report for calendar year 2003, a violation of 199 IAC 23.1(2). On that date, the Board issued an order noting that Story City had been given written notice of the violation and 30 days to correct the violation, yet Story City was still violating 199 IAC 23.1(2). Accordingly, the Board levied a civil penalty against Story City, beginning June 11, 2004, and ending when Story City files its annual report for calendar year 2003. That filing was made on July 1, 2004.

In its June 29, 2004, order, the Board noted that Story City's violations are significant. Board staff resources are wasted each year reminding Story City of this annual requirement and working with the utility to ensure the filing is ultimately made. Eight consecutive years of noncompliance without penalty was cited as evidence of the Board's efforts to work with this utility. Story City's failure to comply even once in that time frame and its failure to respond to the letter of May 11, 2004, indicated a need for the Board to levy a civil penalty against the utility.

Pursuant to § 476.51, civil penalties levied by the Board must be not less than \$100 nor more than \$2,500 per violation. In the case of a continuing violation, each day the violation continues is a separate and distinct offense. In determining the appropriate amount of the penalty, the Board considered various factors.

First, the Board considered the nature of the utility. Story City is a municipal utility, so its customers are effectively its owners. The Board found that this factor weighed against a large penalty, as the burden of the penalty would be borne by the customers.

Second, the Board considered the gravity of the offense and the utility's prior record of violations. The Board stated that failure to file an annual report on a timely basis is a serious offense, but it did not represent an immediate threat to the public health, safety, or welfare. However, Story City has violated 199 IAC 23.1(2) every year for the past eight years. The Board found that these considerations tended to offset one another.

Finally, the Board considered the utility's efforts toward compliance after notification of the violation. Following the issuance of the May 11, 2004, letter, Story City had not made any apparent effort to comply with the annual report requirement. The Board found that this factor supported an enhanced penalty.

Considering all of these factors together, the Board found that the municipal nature of the utility and the absence of any immediate threat to the public were sufficient to justify imposing only the minimum penalty of \$100 per day.

Story City filed its 2003 annual report on July 1, 2004, making for a total civil penalty of \$2,000. As of the date of this order, Story City has not paid the civil penalty.

On August 9, 2004, the Board received a letter dated August 4, 2004, from Story City. In the letter, the Administrator of the Story City Municipal Electric Utility accepted full responsibility for the utility's failure to file its annual report in a timely manner. The Administrator further stated that on July 14, 2004, he met with the Story City Board of Trustees and outlined the following procedures to prevent recurrence of the problem:

1. A list of all state and federal reports will be compiled, along with their respective due dates, and will be provided to the Board of Trustees and to the utility clerks so that they may provide oversight.
2. Story City will utilize the resources of the Iowa Association of Municipal Utilities which assists its members in completing various reporting requirements.
3. When warranted, responsibilities for filing reports will be delegated to other utility staff.

The letter concluded with a request that the Board consider reducing the severity of the civil penalty, noting that while the utility's actions were deserving of a reprimand, a \$2,000 penalty is significant for a small utility.

Iowa Code § 476.51 provides, in relevant part, that "any civil penalty may be compromised by the board." In determining the amount agreed upon in a compromise, the Board may consider the following factors:

1. The appropriateness of the penalty in relation to the size of the public utility;
2. The gravity of the violation;
3. The good faith of the utility in attempting to achieve compliance following notification of the violation; and
4. Any other relevant factors.

Clearly, the decision to compromise a civil penalty is highly dependent upon the specific facts and circumstances of each case. Accordingly, the Board concludes that its decision in this case should have very limited precedential value, if any.

According to its 2003 annual report, Story City has 1,825 customers and annual revenues of \$3,123,264. In the absence of any other factors, it may fairly be said that a \$2,000 civil penalty would be significant for Story City, as would a smaller penalty.

The Board has already determined that the violation is a serious offense, especially when combined with an eight-year history of late filings, but it does not represent an immediate threat to the public health, safety, or welfare.

The record of Story City's attempts to achieve compliance tells a mixed story. Story City failed to act in response to the first notification of violation, the letter of May 11, 2004, but in response to the Board's June 29, 2004, order, Story City filed its annual report in only two days. Moreover, within 15 days of the Board's order, the utility held a meeting of its Board of Trustees to consider longer-term solutions.

Finally, the Board has considered the scope of Story City's new procedures, which are encouraging but not particularly detailed or stringent. The Board would have preferred to see a copy of the list of state and federal reports and their associated deadlines. If the list had been filed, the Board could have evaluated its completeness. Similarly, the commitment to delegate responsibility for filing reports "when warranted" is lacking in specifics.

Considering all of these factors, along with the Board's original decision to assess only the minimum statutory penalty prior to compromise, the Board concludes that it will compromise and reduce the civil penalty to \$200. However, the Board strongly cautions Story City that if its future filings are not made on a timely basis, the Board will not be as lenient when determining the amount of any future civil penalty.

Further, the Board again notes that cases involving the imposition of civil penalties are fact-sensitive. While the Board expects to be guided by the principles discussed and applied in this case, utilities should not expect the Board to regularly compromise civil penalties. The Board anticipates that the compromise of a civil penalty will be a rare event.

IT IS THEREFORE ORDERED:

Pursuant to Iowa Code § 476.51 (2003), the Board compromises and reduces the civil penalty levied in its order dated June 29, 2004, against Story City Municipal Electric Utility from \$2,000 to \$200. Payment shall be due on or before 30 days from

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the date of this order. Payment shall be made to the Iowa Utilities Board and forwarded to the Executive Secretary at 350 Maple Street, Des Moines, Iowa 50319-0069.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 20th day of August, 2004.